Bergen, Norway
15 January 2007

US Patent & Trademark Office Customer Service Window The Randolph Building 401 Dulaney Street 1st Floor Alexandria, VA 22314 USA

Our ref.: P16982US00 Christian Abel Your ref.:

#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application serial No.:	10/717461
Inventor:	Kjell-Tore Smith
	Øyvind Hammer Johansen
	Erlend Skjold
	Richard Gjersøe
For:	Pressable plastic-bound explosive composition
Group No.:	3643
Examiner:	Gellner
Attorney docket no.:	115700

#### **DECLARATION UNDER 37 CFR 1.131**

We, Kjell-Tore Smith, Øyvind Hammer Johansen, Erlend Skjold and Richard Gjersøe, hereby Declare as follows:

- 1. This declaration is to establish completion of the invention in a WTO country, namely Norway, at a date prior to 24 September 2002, that is the effective date of the prior art reference US 6,884,307 to Hoffman et al.
- 2. Prior to 24 September 2002, we completed the invention at the at the laboratories of Dyno Nobel ASA, Sætre, Norway, as evidenced by the following:

Faks fra:

- a. PBXW-17 is an explosive composition that appeared at the first time as we know at a conference in Reno Nevada in 1997 with a paper given by Kirk Newman and Sharon Brown from US Navy. This reference is discussed in the specification of our application. This reference suggested that pressing pressures of over 1350 bar were required to achieve over 98% TMD (theoretical maximum density), and that pressure over 1520 bar does not noticeably increase the density of the compositions.
- b. Despite the teachings of this paper, we began as early as 1999 experimenting with pressable explosive compositions based in part upon bimodal grain compositions of RDX type I and HMX explosive crystals, together with a polyacrylic elastomer and a plasticizer. The purpose of the experiments was, inter alia, to arrive at a pressable explosive composition with a theoretical maximum density (TMD) preferably greater than 99%. If successful, the improvement from the 98% reported by Newman et al to over 99% TMD would be a substantial improvement. The experiments were in part motivated by a request from our long-term customer, Diehl in Mariahütte in Germany, for development of an RDX-based explosive with improved pressability.
- c. Various compositions corresponding to our claimed invention were completed and tested prior to 24 September 2002, such compositions comprising different combinations of bimodal grain size distributions prepared using the water slurry process. Among the compositions completed and tested were compositions that comprised coarse-grained RDX (type I) class 1 together with fine-grained RDX (type I) class 5 (either with or without added HMX). Other compositions completed and tested comprised coarse-grained RDX (type I) class 7 together with fine-grained RDX (type I) class 5 (either with or without added HMX).

Faks fra:

The grain sizes of the above-mentioned classes are well known in the art, as expressed in the military specification, MIL-DTL-398D specifying the classes. The classification of Class 1, 5 and 7 are as given in the table below:

USS Sieve number	Size of opening	Class 1 requirement % Through	Class 5 requirement % Through	Class 7 requirement % Through
20	850 µm	96 – 100		
50	300 µm	80 - 100		<u>96 – 100</u>
100	150 µm	30 - 90		82 – 98
200	75 µm	5-45		31 – 61
325	45 µm		97 – 100	

- d. Attached hereto as EXHIBIT A are exemplary copies of pages from bound laboratory notebooks showing several of the various compositions completed and tested at Dyno Nobel's pilot plant in Norway from as early as 1999. The notebook pages are dated ("Dato") and signed ("Signatur") on the dates the compositions were completed, as well as being signed and dated on the date of independent analysis of the samples ("Analysert av" and "Dato").
- The results of the experiments evidenced by the laboratory notebook entries are summarized in the tables attached as EXHIBIT B. (This table was previously notarized by a Notary Public on 21 March 2003). In these tables, the batch number ("Sats nummer") indicates the batch number separated by the year of the test with a "slash", for example sats nummer 83/99 being completed in the year 1999. The tables indicate, among other parameters, the amount of coarse grained RDX (RDX kl. 1) and fine grained RDX (RDX kl. 5) utilized in the composition, as well as the %TMD achieved.
- The first batches of the improved PBXW-17 produced at Dyno Nobel were batches number 83/99 and 84/99 produced 26-27 may 1999 under our direction by Mr. Gunnar Agersten in our pilot plant facility. These batches contained bimodal blends of Class 1 and Class 5 corresponding to the claimed invention. These two batches were sent to Diehl for testing as lot number NSI99H0001E and NSI99H0002E, respectively. Attached hereto as EXHIBIT C is the delivery report for these batches dated 30.08.1999 and signed by inventors Erlend Skjold and. Øyvind Johansen. Already at this time we found an extraordinary good pressability for this composition that was above 99.2 % TMD for one of the samples.
- g. Further development at Dyno Nobel of this composition has led us to use a somewhat finer crystal, class 7, as the course crystal. Both class 1 and class 7 are within the range of the course crystal size specified in the claims in the patent application. The first batches produced by a bimodal blend of class 7 and class 5 was batch number 506/00 and 507/00 produced 4-5 July 2000 under our direction by Mr. Jon Aage Amesen. The pressability of these batches was above 99.2 % even

at pressure as low as less than 500 bars. At normal operating pressure a density close to 100 % TMD could be obtained.

- h. In a large-scale production (200 kg/batch), the first batch with the bimodal blend of class 7 and class 5 was G-house (a specific production house) batch 6-9, produced 7-11 September 2000. Two of the batches, batch 8 and 9, were produced under our direction by Mr. Arild Heggedal and Mr. Jarl Støa. These batches were sent to Diehl for testing as lot numbers NSI00H0006E and NSI00H0007E, respectively. Attached hereto as EXHIBIT D is the delivery report dated 18. September 2000 and signed by Mr Øyvind Johansen and Dr. Kjell-Tore Smith. The pressability for these two lots was both reported to be 99.5 % TMD, pressed at about 1100 bar.
- 3. We acknowledge that wilful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. We declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true.

Smith date: 15 Jan, 2007

ind Hammer Vohansen date: 15 Jan 2007

Und Sterold date: 15 Jan 2002

ichard Gjersøe date: 15. joss 2007

Vogn 1. %         Vogn 2. %         Vogn 3. %         Vogn 3. %           Analysent av:         Dato: 1 -19         Artikr ng:         Kontrollent av:         Dato: 1 -19	Voles Akundalını ta	Solution   Solution	***	Annedstinger:    Padghat   Padghat	a Stephayre B	100 50 60 80 100 200 Buildin 10 100 100 100 100 100 100 100 100 100	AVN-1/2-Sats nr. 5   Veltt.   Prod.stedt. G   Dato: 8/A-94 Signatur: 9.H
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# EXHIBIT B



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Pressetetthet %TMD #RIKSjonskoeffisi	Siki 1611 Siki 1807 Volumvekt g/ml (min 0.8) Hyder gjennom skivestør Saumensetning	1648	Kommentar	Wilsin Etterekstra jøsemidde engdelajgeniskrase (kg) 1994 engdelara fesselfuntetterni i	ngdelbindemiddelulakken A <sup>10</sup> 6 lasemiddalif allakken	engde Quenchvann ereaninger	engde lakk (kg) kstral Løsemiddel (kg	DXKI 1 (kg) DXKI 5 SIVerson (kg) hodapex (grain)	ningsmiddel til lakki(kg	erigderHytemp (kg erigderHytemp (kg	nn/Masse(spren	andel av kl 5 (i komposisjonen)	Angi total vannmengde	Angi vannmengde (kg)	Angi lakkons. (vekt %) Angi total Ism menade	Angi Satsstørrelse (kg)	Sats nummer	ımenligning
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a)(社無60 (大)(社無60 Volumvekt g/m! (min 0:8) Flyter gjennom skivestørrelse / mm) Sammensekning: RDX Flytering  Flytering  Flytering  Flytering  Fresseteithet: %TMD  Fresseteithet:	V_96 Smi=tter-existrangsemiode(i)	Wengde Hvemprikg)  Wengde Doa (kg)  Leasingsmiddel dillakk (kg)  RDx kli is Silverson (kg)  Rbdapex (gran)  Rhodapex (gran)  Rhodapex (gran)  Rhodapex (gran)  Rhodapex (gran)  Wengde Suleinchvann  Wengde Suleinchvann  Wengde bindemiddel frailakken (kg)  Vekt wildsemiddel frailakken	% andel sprengstori % andel av kl 5 (i komposisjonen) % andel av kl 5 (i komposisjonen) VannMasse(sprengstori) to mold Safsing	Arigi total isin mengde (hvis extra ism) Arigi vannmengde (kg) Arigi total vannmengde	Sammenligning.av PBXW-17 satser  Ptoduksjon  Sats numner  Angl Satsstorreise (kg)  Angl lakkons. (vekt %)  15:
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9,76 7 96,44 4,71 2,5,5 1,699 97,287 4,30,13	Sats 3 or gjort til charge	1300 G	(#DIV/OI		66/5/U)
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er.		ming:	When diennom skivestarrelse (mm)									ase kg	88138	ism Etter ekstra løsemidde	t-%ijdsemlüdelfrælakkenulen extr	iddel fra		gde Quenchvann	I/N/tanon	(Kg)	am) # 18 18 18 18 18 18 18 18 18 18 18 18 18	erson (kg)	ngsmiddel til lakkykg)	(kg)	mp (Kg):	% andel av kl 5 (i komposisjonen)	ngstoff	nmengde	ngde (kg)	Angi total ism mengde (hvis extra ism)	(vekt %)	plea (ka)		
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0,000	<b>新国的加盟</b>	10000	\$1.00 Medical \$1									F-RDX (Cv)	5 200		1118.42	-0.00	0.60	25,00		0.000	600	67511	675	1113	0,88	45	90	60	35	5,94	15,411	15	708/04	The second secon
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## EXHIBITC



#### DELIVERY REPORT

Subject: PBXW-17 Date: 30.08.99

#### ANALYSIS OF PBXW-17

Buyer : Karl Diehl Mariahütte

Postfach 1163, D-66616 Nonnweiler

Forbundsrep. Tyskland

Order no :

Mr. Wild 14.04.99 (x-6715 C)

Quantity :

20 kg

Lot no. Charge no. NS199H0001E Charge no.1/99

Supplier

DYNO ASA, Defence Products

	Found	Nominal value
RDX HyTemp 4454 Diethylhexyladipate, DOA Moisture Foreign matter Impact Sensitivity (BAM) Pressability (1.1 t/cm², 60 s, RT) Bulk Density	95.5 % 1.1 % 3.4 % 0.02 % 0 33 J 1.719 g/cm <sup>3</sup> 0.95 g/cm <sup>3</sup>	96.0 % 1.0 % 3.0 % Max. 0.10 % 0
Sieve analysis Through USS Sieve No. 16 Through USS Sieve No. 20 Through USS Sieve No. 25 Through USS Sieve No. 30 Through USS Sieve No. 35 Through USS Sieve No. 40	95 % 82 % 60 % 27 % 14 % 4 %	

**DYNO Defence Products** 

Erlend Skjold R&D Manager Agricul H. fertums

Scientist



#### DELIVERY REPORT

Subject: PBXW-17

Date: 30.08.99

#### **ANALYSIS OF PBXW-17**

Buyer

Karl Diehl Mariahütte

Postfach 1163, D-66616 Nonnweiler

Forbundsrep. Tyskland

Order no

Mr. Wild 14.04.99 (x-6715 C)

Quantity

20 kg

Lot no.

NSI99H0002E Charge no.2/99

Charge no. Supplier

DYNO ASA, Defence Products

	Found	Nominal value
RDX HyTemp 4454 Diethylhexyladipate, DOA Moisture Foreign matter Impact Sensitivity (BAM) Pressability (1.1 t/cm², 60 s, RT) Bulk Density	92.8 % 1.8 % 5.4 % 0.02 % 0 18.8 J 1.650 g/cm <sup>3</sup> 0.93 g/cm <sup>3</sup>	92.0 % 2.0 % 6.0 % Max. 0.10 % 0
Sieve analysis Through USS Sieve No. 8 Through USS Sieve No. 12 Through USS Sieve No. 16 Through USS Sieve No. 20 Through USS Sieve No. 25 Through USS Sieve No. 30 Through USS Sieve No. 40	100 % 97 % 78 % 36 % 18 % 3 % 0.1 %	

DYNO Defence Products

Erlend Skjold R&D Manager Syvind Hammer Johansen

Scientist



## Produksjon og analysemelding fra FoU-avdelingen

Dato: 25. August 1999

Produkt: PBXW-17											
Mengde: 20 kg	Charge nummer: 1/99	Lot nummer: NSI99H0001E									
Kunde: Karl Diehl Mariahütte, Tyskland	Lev. tid: Uke 35/99	Best.nummer: Mr. Wild (x-6715 C)									
Produkt spesifikasjon:											
Råvare (komponent) spes HMX: MIL-H-45444, grade	Råvare (komponent) spesifikasjon: HyTemp 4454: WS 32630, DOA: DOD-D-23443										
Emballasje:											
1 Pappfat											

### Råvarer benytttet:

Sats nummer	Lot.nummer	Type	Mengde
Sats 83/99 (PP-1)		PBXW-17	22 kg

Anmerkninger:	1
Rapporteres av FoU.	



## Produksjon og analysemelding fra FoU-avdelingen

Dato: 25. August 1999

Produkt: PBXW-17		
Mengde: 20 kg	Charge nummer: 2/99	Lot nummer: NS199H0002E
Kunde: Karl Dichl Mariahütte, Tyskland	Lev. tid: Uke 35/99	Best.nummer: Mr. Wild (x-6715 C)
Produkt spesifikasjon:		
Råvare (komponent) spesifi	kasjon: HyTemp 4454: WS	32630, DOA: DOD-D-23443
HMX: MIL-H-45444, grade	3	
Emballasje:		
1 Pappfat		

## Råvarer benytttet:

Sats nummer	Lot.nummer	Type	Mengde
Sats 84/99 (PP-1)		PBXW-17	22 kg

	An	m	er	kn	in	ge	r
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Rapporteres av FoU.2

<sup>&</sup>lt;sup>2</sup>Distibusjon: A.Sværen/ A.Gregersen, R.Sørli, B. Berhardsen , FoU-arkiv

## EXHIBIT D

## DYNO Dyno Nobel

Defence Products N-3476 Saetre Norway

WERNS PRICEREUS.

## **DELIVERY REPORT**

Date: 18.09.00 Subject: PBXW-17

#### ANALYSIS OF PBXW-17

Karl Diehl Mariahütte Buyer

Postfach 1163.

D-66616 Nonnweiler Forbundsrep. Tyskland 319336 (x-6965B)

Order no 50 kg Quantity

NSI00H0007E Lot no. Charge no.07/00 Charge no.

DYNO NOBEL ASA, Defence Products Supplier

Nominal value Found  $91.0 \pm 2.0 \%$ 90.9 % RDX  $2.25 \pm 0.75 \%$ 2.1 % HyTemp 4454  $6.75 \pm 1.25 \%$ 7.0 % Diethylhexyladipate, DOA Max. 0.10 % 0.02 % Moisture 0 Foreign matter 0.5 mL/g0.05 mL/g Vacuum thermal stability (VTS) 4 J (RDX Cl. 5 reference) 20 J Impact Sensitivity (BAM) 1.66 g/cm<sup>3</sup> (99.5 %TMD) Informative Pressability (1.1 t/cm<sup>2</sup>, 60 s, RT)  $0.75 \text{ g/cm}^3$  $0.78 \text{ g/cm}^3$ **Bulk Density** 

% Through Sieve analysis Informative 100 % Through USS Sieve No. 8 (2360  $\mu$ ) Informative 56 % Through USS Sieve No. 16 (1180 µ) Informative 9 % Through USS Sieve No. 20 (850  $\mu$ ) Informative 0 % Through USS Sieve No. 30 (600  $\mu$ ) Informative 0 % Through USS Sieve No. 80 (180 µ)

> DYNO NOBEL ASA Defence Products

Oyvind Hanmer Johansen R&D Manager

Scientist



Defence Products N-3476 Saetre Norway

#### **DELIVERY REPORT**

Subject: PBXW-17 Date: 18.09.00

#### ANALYSIS OF PBXW-17

Buyer : Karl Diehl Mariahütte

Postfach 1163,

D-66616 Nomweiler Forbundsrep. Tyskland

Order no : 319336 (x-6965B)

Quantity: 50 kg

Lot no. : NSI00H0006E Charge no. : Charge no.06/00

Supplier : DYNO NOBEL ASA, Defence Products

RDX HyTemp 4454 Diethylhexyladipate, DOA Moisture Foreign matter Vacuum thermal stability (VTS) Impact Sensitivity (BAM) Pressability (1.1 t/cm², 60 s, RT) Bulk Density	Found 91.5 % 2.0 % 6.5 % 0.02 % 0 0.06 mL/g 15 J 1.67 g/cm³ (99.5 %TMD) 0.80 g/cm³	Nominal value $91.0 \pm 2.0 \%$ $2.25 \pm 0.75 \%$ $6.75 \pm 1.25 \%$ Max. $0.10 \%$ 0 0.5  mL/g 4 J (RDX Cl. 5 reference) Informative $0.75 \text{ g/cm}^3$
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Sieve analysis	% Through	
Through USS Sieve No. 8 (2360 μ)	100 %	Informative
	69 %	Informative
Through USS Sieve No. 16 (1180 μ)		Informative
Through USS Sieve No. 20 (850 μ)	15 %	
Through USS Sieve No. 30 (600 μ)	1 %	Informative
Through USS Sieve No. 80 (180 µ)	0 %	Informative

DYNO NOBEL ASA Defence Products

vind Hammer Johansen R&D Manager Kjell-Tore Smith Scientist



Defence Products N-3476 Saetre Norway

## Produksjon og analysemelding fra FoU-avdelingen

Dato: 18. september 2000

Produkt: PBXW-17						
Mengde: 50 kg	Charge nummer: 07/00	Lot nummer: NSI00H0007E				
Kunde: Karl Diehl Mariahütte, TysklandLev. tid:Best.nummer:Uke 38/00319336 (x-6965B)						
Produkt spesifikasjon: 006/99-K-02 Utg. 1						
Råvare (komponent) spesifikasjon: HyTemp 4454: 366-K-197, DOA: 366-K-068  RDX: MIL-R-398C Am. 4, Type II						
Emballasje: Pappfat						
Emparasje: 1 approx						

### Råvarer benytttet:

Sats nummer	Lot.nummer	Туре	Mengde
Sats 9		PBXW-17	220 kg

Anmerkninger:	

Rapporteres av FoU.1

<sup>&</sup>lt;sup>1</sup>Distibusjon: A.Sværen/ G.Veirud, R.Sørli, B. Berhardsen, FoU-arkiv



Defence Products N-3476 Saetre Norway

## Produksjon og analysemelding fra FoU-avdelingen

Dato: 18. september 2000

Produkt: PBXW-17		
Mengde: 50 kg	Charge nummer: 06/00	Lot nummer: NSI00H0006E
Kunde: Karl Diehl Mariahütte, Tyskland	Lev. tid: Uke 38/00	Best.nummer: 319336 (x-6965B)
Produkt spesifikasjon: 006/9	19-K-02 Utg. 1	
Råvare (komponent) spesifi		-K-197, DOA: 366-K-068
RDX: MIL-R-398C Am. 4, T	ype 11	
Emballasje: Pappfat		

### Råvarer benytttet:

Sats nummer	Lot.nummer	Туре	Mengde
Sats 8		PBXW-17	220 kg
Duta 0			

Anmerkninger:	

Rapporteres av FoU.1

<sup>&</sup>lt;sup>1</sup>Distibusjon: A.Sværen/ G.Veirud, R.Sørli, B. Berhardsen, FoU-arkiv